

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-208615

DATE: March 10, 1983

MATTER OF: Rack Engineering Company

DIGEST:

1. Determination of agency's minimum needs is primarily the responsibility of the agency since procuring officials are most familiar with the conditions under which the supplies and services being procured will be used. Where the procuring agency has established prima facie support for the necessity for specifications which are alleged to be unduly restrictive, the protester's disagreement with the agency's technical conclusions does not establish that the specifications are unreasonable.
2. Technical specifications which are shown to have a reasonable basis are not improper simply because they can be satisfied by only a limited number of firms.

Rack Engineering Company (Rack) protests the proposed award of a contract to Stanley-Vidmar, Inc. (Stanley), for the purchase and installation of 13 storage systems at the Sacramento Army Depot (SAAD) under solicitation No. DAAG08-82-R-0383. Rack asserts that it offered equivalent systems at a substantially lower price but the Army unreasonably restricted competition by requiring features which are unique to Stanley's product.

We find the protest without merit.

The solicitation was issued on July 12, 1982, as a sole-source procurement to Stanley. In response to a Commerce Business Daily notice, 10 firms, including Rack, requested copies of the solicitation. On July 29, 1982, Rack protested to the Army the sole-source restriction. By letter of August 2, 1982, the Army denied Rack's protest indicating that if Rack submitted a proposal prior to the August 18, 1982, closing date, Rack's proposal would be evaluated for technical sufficiency against nine specified technical requirements. Thereupon, Rack filed its protest with our Office on August 13, 1982. Rack also submitted a

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timely proposal to the Army at a price of \$430,570.23. A third firm, Lista International Corporation (Lista), timely submitted a proposal at a price of \$416,654.84. The Army proposes to award to Stanley at a price of \$609,922, but is withholding award pending our decision.

The Army's sole-source determination was based primarily on the fact that the Stanley system racks and pallets are unique and proprietary and provide the only system which would be readily interchangeable with an existing Stanley system which was previously installed at SAAD. In its justification for the interchangeability requirement, the Army indicated that pallets would have to be unloaded and reloaded when moving items from the existing system to the newly acquired system. The Army estimated that additional costs of handling and damage during such transfers would amount to \$192,000 over a 10-year period. The Army also noted three safety features as "non-quantified benefits" unique to Stanley's system. These were:

1. Free-fall protection to assure operator safety in case of hoist chain break;
2. Positive fork-guided entry which eliminates tipping and spilling of unbalanced pallet loads from both system forks and lift truck forks; and
3. Pallet and rack design which prevents tipping and spilling pallet loads while loading and unloading pallets from system racks.

We believe that the Army's action in response to the initial Rack protest essentially changed the procurement to one conducted on a brand name or equal basis. Rack's protest relates to what it alleges to be the Army's unreasonable restriction of competition by the requirement of technical features which Rack asserts do not relate legitimately to agency needs. Rack alleges that its product has been deemed an "equal" product to Stanley's over the years in numerous procurements and that previously both products were on the General Services Administration Federal Supply Schedule (FSS). Accordingly, Rack asserts that the products are equivalent and the particular features specified by the Army are Stanley "proprietary designed constraints" which are sales features of that company, but which Rack contends serve no useful function with respect to the Army's actual minimum needs.

(The determination of the Government's minimum needs and the best method of accommodating those needs are primarily the responsibility of the contracting activities.) Since the Government procurement officials are the ones most familiar with the conditions in which supplies, equipment or services have been used in the past and how they are to be used in the future, they are generally in the best position to know the Government's actual needs. Consequently, we will not question an agency's determination of its actual minimum needs unless there is a clear showing that the determination has no reasonable basis. Frequency Electronics, Inc., B-204483, April 5, 1982, 82-1 CPD 303. When a protester challenges a specification as unduly restrictive of competition, the burden is on the procuring activity to establish prima facie support for its contention that the restrictions it imposes are needed to meet its minimum needs. But once the agency establishes this support, the burden shifts to the protester to show that the requirements objected to are clearly unreasonable. Mid-Atlantic Industries, Inc., B-202682, August 26, 1981, 81-2 CPD 181.

Here, all of the requirements were based on safety and operational needs as identified by the industrial engineer responsible for the project and each was deemed essential to the safe and efficient operation of the system. The agency has provided a specific and reasonable basis for each of the nine features to which Rack objects. For example, the free-fall safety device is required since the conditions under which the equipment must be operated could cause damage to the hoist chain and related mechanism, thus a redundant safety device is needed to protect operator, load and equipment. In addition, this feature provides a takeup reel for the chain which prevents cross-linking and consequent damage to the chain. Leveling bolts are required as an installation aid because planned plant layout changes will require SAAD to relocate and reinstall each of the systems in the near future. Leveling bolts allow quick and easy system installation and reduce the likelihood of improper installation by agency personnel. Built-in lighting is required as a safety feature to overcome inadequate warehouse lighting where the systems are installed. The height of the system blocks most existing lighting and precludes effective use of overhead lighting in the storage buildings, thus lighting attached to the system is essential. The 37 pallet positions in 13 feet of height requirement is considered essential because the resulting variable pallet height minimizes wasted space.

Rack has disputed the necessity of several of the features because it believes them to be unnecessary or undesirable, or because Rack contends that it offers equal or superior alternatives. For example, Rack argues that the free-fall safety device is not a standard or required feature in the industry and that it is not necessary on Rack's system. Rack provides a hoist chain safety factor of twice the industry standard, which gives a factor of 40 times the weight being supported by the chains. Rack contends that leveling bolts are dangerous and that shimming is preferred and also notes that it can provide such bolts if requested. Rack contends that having fixed lights can be a safety hazard and contends that it offers the option of installing lights or not. Rack argues that the 4-inch centers needed to permit the required 37 pallet positions is not recommended and is unsafe and notes that it could build such a system but elects not to.

It is evident that Rack is really contending that it has greater technical expertise and a better knowledge of what features are required for this product than does the contracting activity. As already noted, we have held that the determination of an agency's minimum needs is largely a matter of discretion on the part of the agency's contracting officials. A procuring agency's technical conclusions concerning its actual needs are entitled to great weight and will be accepted unless there is a clear showing that the conclusions are arbitrary. Industrial Acoustics Company, Inc., et al., B-194517, February 19, 1980, 80-1 CPD 139. It is not the function of our Office to conduct an independent analysis of a contracting agency's minimum needs. In this instance we are faced with a technical dispute. Rack has not shown that the Army's specifications are arbitrary or unreasonable, but only that it believes that the underlying technical conclusions are wrong. Such an argument does not satisfy the protester's burden of proof. EMI Medical Inc.; Picker Corporation, B-195487, February 6, 1980, 80-1 CPD 96; Bell & Howell Corporation; Realist, Inc., B-193301, February 6, 1979, 79-1 CPD 82.


Even if Rack is correct in its assertion that the particular features required are ones which can only be satisfied by Stanley's system, if a specification is reasonable and necessary, as we have concluded here, the fact that only one firm or a few firms can meet it does not violate competitive procurement requirements. Gerber Scientific Instrument Company, B-197265, April 8, 1980, 80-1 CPD 263. Also, while Rack has characterized many of the

features in question, most particularly the free-fall device, as proprietary to Stanley, the Army technical evaluation found that while Rack's product did not comply with this requirement, the Lista product did. Similarly, although the Lista product did not meet all of the technical requirements, it was found to meet other allegedly proprietary specifications such as the 37 pallet positions requirement.

With respect to Rack's contention that, notwithstanding the Army's conclusion, its product is recognized in the industry and in past procurements as being equal to Stanley's product, as is further evidenced by the fact that both products were previously listed on the FSS, we find this evidence of no probative value with respect to the SAAD's particular minimum needs under the specific conditions pertaining to this procurement.

Finally, Rack has asserted that while it does not routinely offer several of the features and did not offer them in the descriptive literature accompanying its proposal, it could provide the features on request and it never refused to do so. However, it is the responsibility of the offeror to establish that what it proposes will meet the Government's needs. Armidir Ltd., B-205890, July 27, 1982, 82-2 CPD 83. Thus, the fact that Rack has subsequently asserted that it could provide features if necessary is immaterial in view of the fact that it failed to so indicate in its proposal. Moreover, with respect to at least one significant requirement, the free-fall safety feature, Rack has made it abundantly clear that it does not offer the device either as standard equipment or as an optional feature, and instead simply takes exception to the necessity for such a redundant safety device.

We deny the protest.

for 
Comptroller General
of the United States